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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,224	10/24/2005	Kuniaki Ishibashi	052638	7956
38834 7590 01/30/2009 WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036				
EXAMINER SIDDIQUE, OMAR F				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/554,224

Applicant(s)

ISHIBASHI ET AL.

Examiner

OMAR SIDDIQUE

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/IC)
Paper No(s)/Mail Date 10/17/2008 and 12/18/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Recognition of the applicants amendments to claims filed on 10/17/2008 have been acknowledged and no new matter has been added.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 11/244,159. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the applicant (broad) are embraced by the copending application (narrow).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

With regard to claim 1 of application 11/244,159, the copending application teaches, stretching in the widthwise direction while shrinking in the longitudinal direction. The copending application further teaches the same ratios as the application being examined (SMD and STD). Additionally the copending application provides further teachings such as having an Nz coefficient, thus making it narrower than the current applications claim (1). The copending application is narrower than the current application, thus claim 1 of the current application is embraced by the copending application.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 and 3-6, are rejected under 35 U.S.C. 102(b) as being anticipated by

Sakamaki U.S. Publication No. 2002/0008840.

With regard to claim 1, Ishibashi teaches the production of a bi-refrigrant film (Page 6, [0128]) which is stretched in the width direction while being shrunk in the longitudinal direction. Sakamaki teaches a method for stretching an optical polymer film (birefringent film) as well. Sakamaki teaches the stretching of the polymer film in the **width direction with a ratio of 1.1 to 20.00** (Page 2, [0025]). Furthermore, Sakamaki teaches the **shrinkage of the polymer film while stretching in the width direction** (Page 5, [0119]). Additionally Sakamaki teaches the **shrinkage being 10% or more** (Page 4, [0111]). The shrinkage taught by Sakamaki is seen as longitudinal shrinkage as the polymer film sheet is being held by points A1 and C1 (An and Cn: Figure 1) prohibiting shrinkage in the width direction. The above mentioned ranges for longitudinal shrinkage and expansion by width are embraced by the equation provided by claim 1 of the applicant.

With regards to claims 3-6, Sakamaki teaches a stretching range of 1.1 to 20 (Width) and a shrinkage ratio of 10% longitudinal (see above). The mentioned width and longitudinal ratio's anticipate the limitations of claims 3-6. For example, the beginning dimension of the film is 1 in the width and length ratio. A ratio of 1.3 applied in the width direction (stretching) would provide **a value of .877** $((1/1.3)^{1/2})$. As noted above, shrinkage of 10% would give **a SMD value of 0.9**. The above calculated values fully comply with the equation provided by claim 1.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamaki U.S. Publication No. 2002/0008840 as applied to claim 1 above, and in view of Takahashi U.S. Publication No. 2006/0262401.

With regard to claims 7 and 8, Sakamaki fails to teach the stretching and shrinkage of the polymer film on a base at the same time. Takahashi teaches a method for producing a birefringent film similar to the applicants (i.e. forming the film directly on a support base). Furthermore Takahashi teaches the use of a support base material on which the **formation of the film, shrinking and stretching** is conducted (Page 7, [0099]). It would have been obvious to one of ordinary skill in the art to use Takahashi's support base material process with

Sakamaki's process because the support base material would result in high production efficiency, high processing precision, and a continuous production process is possible (Page 7, [0099]) Additionally the use of a base which comprises the stretching and shrinking step would obviate any problems (e.g. inadvertently damaging the film) which could arise during the transferring of the film from the formation station to the stretching/shrinking station.

Response to Arguments

9. Applicant's arguments filed 10/17/2008 have been fully considered but they are not persuasive.

With regard to claim 1, Applicant provides two arguments against Sakamaki (804), (1) the shrinking is not occurring during the stretching, and (2) that the shrinking is not in the longitudinal direction. On page 5, paragraph 0119, Sakamaki (804) teaches the film being shrunk in either the steps during or after stretching. Furthermore, as mentioned earlier, the film is held in the width direction and stretched; it is not possible for the film to be shrunk in the width direction while being held. Furthermore even if it were possible to shrink in the width direction, it would be clear that when stretching in the width direction, that shrinking would occur in the opposite direction (longitudinal direction).

With regard to claim 3-8, see argument in regard to claim 1.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's amendment necessitated the new ground(s) of

rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMAR SIDDIQUE whose telephone number is (571)270-5515. The examiner can normally be reached on Monday-Friday 9AM-5AM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 1-571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven P. Griffin/
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